

Introduced by Senator Dunn

(Coauthors: Assembly Members Garcia and Leslie)

February 17, 2006

An act to amend Sections 65589.5, 65863, and 65915 of the Government Code, relating to housing.

LEGISLATIVE COUNSEL'S DIGEST

SB 1330, as introduced, Dunn. Housing developments: attorney's fees.

The Planning and Zoning Law requires local agencies to make specified written findings based upon substantial evidence in the record before disapproving or conditionally approving a housing development project that renders it infeasible for the use of very low, low-, or moderate-income households, including farmworker housing.

The Planning and Zoning Law also prohibits a city, county, or city and county from reducing, requiring, or permitting the reduction of the residential density to a lower residential density that is below the density that was utilized by the Department of Housing and Community Development in determining compliance with housing element law unless the city, county, or city and county makes written findings supported by substantial evidence that the reduction is consistent with the adopted general plan, including the housing element, and the remaining sites identified in the housing element are adequate to accommodate the jurisdiction's share of the regional housing need. The city, county, or city and county may reduce the residential density for a parcel if it identifies sufficient additional sites, as prescribed.

The Planning and Zoning Law also requires, when a developer of housing proposes a housing development within the jurisdiction of the local government, that the city, county, or city and county provide the

developer with a density bonus or other incentives or concessions for the production of lower income housing units if the developer agrees to construct a specified percentage of the total units for specified income households or qualifying residents and requires the developer to agree to the continued affordability of the units, as specified.

Existing law requires that in any action in which the court finds a violation of any of the above provisions, the court is required to award to the plaintiff reasonable attorney's fees and costs, as specified.

This bill would revise the attorney's fees and costs provisions in all 3 of the above provisions by requiring the court to award reasonable attorney's fees and costs, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of these provisions, in addition to any attorney fees to which the plaintiff is entitled under a specified provision of the Code of Civil Procedure.

Vote: majority. Appropriation: no. Fiscal committee: no.
State-mandated local program: no.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 65589.5 of the Government Code is
- 2 amended to read:
- 3 65589.5. (a) The Legislature finds and declares all of the
- 4 following:
- 5 (1) The lack of housing is a critical problem that threatens the
- 6 economic, environmental, and social quality of life in California.
- 7 (2) California housing has become the most expensive in the
- 8 nation. The excessive cost of the state's housing supply is
- 9 partially caused by activities and policies of many local
- 10 governments that limit the approval of housing, increase the cost
- 11 of land for housing, and require that high fees and exactions be
- 12 paid by producers of housing.
- 13 (3) Among the consequences of those actions are
- 14 discrimination against low-income and minority households, lack
- 15 of housing to support employment growth, imbalance in jobs and
- 16 housing, reduced mobility, urban sprawl, excessive commuting,
- 17 and air quality deterioration.
- 18 (4) Many local governments do not give adequate attention to
- 19 the economic, environmental, and social costs of decisions that

1 result in disapproval of housing projects, reduction in density of
2 housing projects, and excessive standards for housing projects.

3 (b) It is the policy of the state that a local government not
4 reject or make infeasible housing developments that contribute to
5 meeting the housing need determined pursuant to this article
6 without a thorough analysis of the economic, social, and
7 environmental effects of the action and without complying with
8 subdivision (d).

9 (c) The Legislature also recognizes that premature and
10 unnecessary development of agricultural lands for urban uses
11 continues to have adverse effects on the availability of those
12 lands for food and fiber production and on the economy of the
13 state. Furthermore, it is the policy of the state that development
14 should be guided away from prime agricultural lands; therefore,
15 in implementing this section, local jurisdictions should
16 encourage, to the maximum extent practicable, in filling existing
17 urban areas.

18 (d) A local agency shall not disapprove a housing
19 development project, including farmworker housing as defined in
20 subdivision (d) of Section 50199.50 of the Health and Safety
21 Code, for very low, low-, or moderate-income households or
22 condition approval, including through the use of design review
23 standards, in a manner that renders the project infeasible for
24 development for the use of very low, low-, or moderate-income
25 households unless it makes written findings, based upon
26 substantial evidence in the record, as to one of the following:

27 (1) The jurisdiction has adopted a housing element pursuant to
28 this article that has been revised in accordance with Section
29 65588 and that is in substantial compliance with this article, and
30 the development project is not needed for the jurisdiction to meet
31 its share of the regional housing need for very low, low-, or
32 moderate-income housing.

33 (2) The development project as proposed would have a
34 specific, adverse impact upon the public health or safety, and
35 there is no feasible method to satisfactorily mitigate or avoid the
36 specific adverse impact without rendering the development
37 unaffordable to low- and moderate-income households. As used
38 in this paragraph, a “specific, adverse impact” means a
39 significant, quantifiable, direct, and unavoidable impact, based
40 on objective, identified written public health or safety standards,

1 policies, or conditions as they existed on the date the application
2 was deemed complete.

3 (3) The denial of the project or imposition of conditions is
4 required in order to comply with specific state or federal law, and
5 there is no feasible method to comply without rendering the
6 development unaffordable to low- and moderate-income
7 households.

8 (4) The development project is proposed on land zoned for
9 agriculture or resource preservation that is surrounded on at least
10 two sides by land being used for agricultural or resource
11 preservation purposes, or which does not have adequate water or
12 wastewater facilities to serve the project.

13 (5) The development project is inconsistent with both the
14 jurisdiction's zoning ordinance and general plan land use
15 designation as specified in any element of the general plan as it
16 existed on the date the application was deemed complete, and the
17 jurisdiction has adopted a housing element in substantial
18 compliance with this article. This subdivision cannot be utilized
19 to disapprove a housing development project defined in
20 subdivision (a) if the development project is proposed on a site
21 that is identified for very low, low-, or moderate-income
22 households in the jurisdiction's housing element, and consistent
23 with the density specified in the housing element, even though it
24 is inconsistent with both the jurisdiction's zoning ordinance and
25 general plan land use designation.

26 (e) Nothing in this section shall be construed to relieve the
27 local agency from complying with the Congestion Management
28 Program required by Chapter 2.6 (commencing with Section
29 65088) of Division 1 of Title 7 or the California Coastal Act
30 (Division 20 (commencing with Section 30000) of the Public
31 Resources Code). Neither shall anything in this section be
32 construed to relieve the local agency from making one or more of
33 the findings required pursuant to Section 21081 of the Public
34 Resources Code or otherwise complying with the California
35 Environmental Quality Act (Division 13 (commencing with
36 Section 21000) of the Public Resources Code).

37 (f) Nothing in this section shall be construed to prohibit a local
38 agency from requiring the development project to comply with
39 objective, quantifiable, written development standards,
40 conditions, and policies appropriate to, and consistent with,

1 meeting the jurisdiction's share of the regional housing need
2 pursuant to Section 65584. However, the development standards,
3 conditions, and policies shall be applied to facilitate and
4 accommodate development at the density permitted on the site
5 and proposed by the development project. Nothing in this section
6 shall be construed to prohibit a local agency from imposing fees
7 and other exactions otherwise authorized by law that are essential
8 to provide necessary public services and facilities to the
9 development project.

10 (g) This section shall be applicable to charter cities because
11 the Legislature finds that the lack of housing is a critical
12 statewide problem.

13 (h) The following definitions apply for the purposes of this
14 section:

15 (1) "Feasible" means capable of being accomplished in a
16 successful manner within a reasonable period of time, taking into
17 account economic, environmental, social, and technological
18 factors.

19 (2) "Housing development project" means a use consisting of
20 either of the following:

21 (A) Residential units only.

22 (B) Mixed-use developments consisting of residential and
23 nonresidential uses in which nonresidential uses are limited to
24 neighborhood commercial uses and to the first floor of buildings
25 that are two or more stories. As used in this paragraph,
26 "neighborhood commercial" means small-scale general or
27 specialty stores that furnish goods and services primarily to
28 residents of the neighborhood.

29 (3) "Housing for very low, low-, or moderate-income
30 households" means that either (A) at least 20 percent of the total
31 units shall be sold or rented to lower income households, as
32 defined in Section 50079.5 of the Health and Safety Code, or (B)
33 100 percent of the units shall be sold or rented to
34 moderate-income households as defined in Section 50093 of the
35 Health and Safety Code, or middle-income households, as
36 defined in Section 65008 of this code. Housing units targeted for
37 lower income households shall be made available at a monthly
38 housing cost that does not exceed 30 percent of 60 percent of
39 area median income with adjustments for household size made in
40 accordance with the adjustment factors on which the lower

1 income eligibility limits are based. Housing units targeted for
2 persons and families of moderate income shall be made available
3 at a monthly housing cost that does not exceed 30 percent of 100
4 percent of area median income with adjustments for household
5 size made in accordance with the adjustment factors on which the
6 moderate income eligibility limits are based.

7 (4) “Area median income” means area median income as
8 periodically established by the Department of Housing and
9 Community Development pursuant to Section 50093 of the
10 Health and Safety Code. The developer shall provide sufficient
11 legal commitments to ensure continued availability of units for
12 very low or low-income households in accordance with the
13 provisions of this subdivision for 30 years.

14 (5) “Neighborhood” means a planning area commonly
15 identified as such in a community’s planning documents, and
16 identified as a neighborhood by the individuals residing and
17 working within the neighborhood. Documentation demonstrating
18 that the area meets the definition of neighborhood may include a
19 map prepared for planning purposes which lists the name and
20 boundaries of the neighborhood.

21 (6) “Disapprove the development project” includes any
22 instance in which a local agency does either of the following:

23 (A) Votes on a proposed housing development project
24 application and the application is disapproved.

25 (B) Fails to comply with the time periods specified in
26 subparagraph (B) of paragraph (1) of subdivision (a) of Section
27 65950. An extension of time pursuant to Article 5 (commencing
28 with Section 65950) shall be deemed to be an extension of time
29 pursuant to this paragraph.

30 (i) If any city, county, or city and county denies approval or
31 imposes restrictions, including design changes, a reduction of
32 allowable densities or the percentage of a lot that may be
33 occupied by a building or structure under the applicable planning
34 and zoning in force at the time the application is deemed
35 complete pursuant to Section 65943, that have a substantial
36 adverse effect on the viability or affordability of a housing
37 development for very low, low-, or moderate-income households,
38 and the denial of the development or the imposition of
39 restrictions on the development is the subject of a court action
40 which challenges the denial, then the burden of proof shall be on

1 the local legislative body to show that its decision is consistent
2 with the findings as described in subdivision (d) and that the
3 findings are supported by substantial evidence in the record.

4 (j) When a proposed housing development project complies
5 with applicable, objective general plan and zoning standards and
6 criteria, including design review standards, in effect at the time
7 that the housing development project's application is determined
8 to be complete, but the local agency proposes to disapprove the
9 project or to approve it upon the condition that the project be
10 developed at a lower density, the local agency shall base its
11 decision regarding the proposed housing development project
12 upon written findings supported by substantial evidence on the
13 record that both of the following conditions exist:

14 (1) The housing development project would have a specific,
15 adverse impact upon the public health or safety unless the project
16 is disapproved or approved upon the condition that the project be
17 developed at a lower density. As used in this paragraph, a
18 "specific, adverse impact" means a significant, quantifiable,
19 direct, and unavoidable impact, based on objective, identified
20 written public health or safety standards, policies, or conditions
21 as they existed on the date the application was deemed complete.

22 (2) There is no feasible method to satisfactorily mitigate or
23 avoid the adverse impact identified pursuant to paragraph (1),
24 other than the disapproval of the housing development project or
25 the approval of the project upon the condition that it be
26 developed at a lower density.

27 (k) If in any action brought to enforce the provisions of this
28 section, a court finds that the local agency disapproved a project
29 or conditioned its approval in a manner rendering it infeasible for
30 the development of housing for very low, low-, or
31 moderate-income households, including farmworker housing,
32 without making the findings required by this section or without
33 making sufficient findings supported by substantial evidence, the
34 court shall issue an order or judgment compelling compliance
35 with this section within 60 days, including, but not limited to, an
36 order that the local agency take action on the development
37 project. The court shall retain jurisdiction to ensure that its order
38 or judgment is carried out and shall award reasonable attorney's
39 fees and costs of suit to the plaintiff or petitioner who proposed
40 the housing development, except under extraordinary

1 circumstances in which the court finds that awarding fees would
2 not further the purposes of this section, *in addition to any*
3 *attorney fees to which the plaintiff is entitled under Section*
4 *1021.5 of the Code of Civil Procedure*. If the court determines
5 that its order or judgment has not been carried out within 60
6 days, the court may issue further orders as provided by law to
7 ensure that the purposes and policies of this section are fulfilled.

8 (l) In any action, the record of the proceedings before the local
9 agency shall be filed as expeditiously as possible and,
10 notwithstanding Section 1094.6 of the Code of Civil Procedure,
11 all or part of the record may be filed (1) by the petitioner with the
12 petition or petitioner's points and authorities, (2) by the
13 respondent with respondent's points and authorities, (3) after
14 payment of costs by the petitioner, or (4) as otherwise directed by
15 the court. If the expense of preparing the record has been borne
16 by the petitioner and the petitioner is the prevailing party, the
17 expense shall be taxable as costs.

18 SEC. 2. Section 65863 of the Government Code is amended
19 to read:

20 65863. (a) Each city, county, or city and county shall ensure
21 that its inventory or programs of adequate sites pursuant to
22 paragraph (3) of subdivision (a) of Section 65583 and paragraph
23 (1) of subdivision (c) of Section 65583 can accommodate its
24 share of the regional housing need pursuant to Section 65584,
25 throughout the planning period.

26 (b) No city, county, or city and county shall, by administrative,
27 quasi-judicial, or legislative action, reduce, require, or permit the
28 reduction of the residential density for any parcel to a lower
29 residential density that is below the density that was utilized by
30 the Department of Housing and Community Development in
31 determining compliance with housing element law, Article 10.6
32 (commencing with Section 65580) of Chapter 3, unless the city,
33 county, or city and county makes written findings supported by
34 substantial evidence of both of the following:

35 (1) The reduction is consistent with the adopted general plan,
36 including the housing element.

37 (2) The remaining sites identified in the housing element are
38 adequate to accommodate the jurisdiction's share of the regional
39 housing need pursuant to Section 65584.

(c) If a reduction in residential density for any parcel would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584, the jurisdiction may reduce the density on that parcel if it identifies sufficient additional, adequate, and available sites with an equal or greater residential density in the jurisdiction so that there is no net loss of residential unit capacity.

(d) The requirements of this section shall be in addition to any other law that may restrict or limit the reduction of residential density.

(e) If a court finds that an action of a city, county, or city and county is in violation of this section, the court shall award to the plaintiff ~~or petitioner who proposed the housing development,~~ reasonable attorney's fees and costs of suit, except under extraordinary circumstances in which the court finds that awarding fees would not further the purposes of this section, *in addition to any attorney fees to which the plaintiff is entitled under Section 1021.5 of the Code of Civil Procedure* or the court finds that the action was frivolous. This subdivision shall remain operative only until January 1, 2007, and as of that date is no longer operative, unless a later enacted statute that is enacted before January 1, 2007, deletes or extends that date.

(f) This section requires that a city, county, or city and county be solely responsible for compliance with this section, unless a project applicant requests in his or her initial application, as submitted, a density that would result in the remaining sites in the housing element not being adequate to accommodate the jurisdiction's share of the regional housing need pursuant to Section 65584. In that case, the city, county, or city and county may require the project applicant to comply with this section. The submission of an application for purposes of this subdivision does not depend on the application being deemed complete or being accepted by the city, county, or city and county.

(g) This section shall not be construed to apply to parcels that, prior to January 1, 2003, were either (1) subject to a development agreement, or (2) parcels for which an application for a subdivision map had been submitted.

SEC. 3. Section 65915 of the Government Code is amended to read:

65915. (a) When an applicant seeks a density bonus for a housing development within, or for the donation of land for housing within, the jurisdiction of a city, county, or city and county, that local government shall provide the applicant incentives or concessions for the production of housing units and child care facilities as prescribed in this section. All cities, counties, or cities and counties shall adopt an ordinance that specifies how compliance with this section will be implemented.

(b) A city, county, or city and county shall grant a density bonus and incentives or concessions described in subdivision (d) when the applicant for the housing development seeks and agrees to construct at least any one of the following:

(1) Ten percent of the total units of a housing development for lower income households, as defined in Section 50079.5 of the Health and Safety Code.

(2) Five percent of the total units of a housing development for very low income households, as defined in Section 50105 of the Health and Safety Code.

(3) A senior citizen housing development as defined in Sections 51.3 and 51.12 of the Civil Code.

(4) Ten percent of the total dwelling units in a condominium project as defined in subdivision (f) of, or in a planned development as defined in subdivision (k) of, Section 1351 of the Civil Code, for persons and families of moderate income, as defined in Section 50093 of the Health and Safety Code.

(c) (1) An applicant shall agree to, and the city, county, or city and county shall ensure, continued affordability of all lower income density bonus units for 30 years or a longer period of time if required by the construction or mortgage financing assistance program, mortgage insurance program, or rental subsidy program. Those units targeted for lower income households, as defined in Section 50079.5 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 60 percent of area median income. Those units targeted for very low income households, as defined in Section 50105 of the Health and Safety Code, shall be affordable at a rent that does not exceed 30 percent of 50 percent of area median income.

(2) An applicant shall agree to, and the city, county, or city and county shall ensure that, the initial occupant of the

1 moderate-income units that are directly related to the receipt of
2 the density bonus in the condominium project as defined in
3 subdivision (f) of, or in the planned unit development as defined
4 in subdivision (k) of, Section 1351 of the Civil Code, are persons
5 and families of moderate income, as defined in Section 50093 of
6 the Health and Safety Code. Upon resale, the seller of the unit
7 shall retain the value of any improvements, the downpayment,
8 and the seller's proportionate share of appreciation. The local
9 government shall recapture its proportionate share of
10 appreciation, which shall then be used within three years for any
11 of the purposes described in subdivision (e) of Section 33334.2
12 of the Health and Safety Code that promote homeownership. For
13 purposes of this subdivision, the local government's
14 proportionate share of appreciation shall be equal to the
15 percentage by which the initial sale price to the moderate-income
16 household was less than the fair market value of the home at the
17 time of initial sale.

18 (d) (1) An applicant may submit to a city, county, or city and
19 county a proposal for the specific incentives or concessions that
20 the applicant requests pursuant to this section, and may request a
21 meeting with the city, county, or city and county. The city,
22 county, or city and county shall grant the concession or incentive
23 requested by the applicant unless the city, county, or city and
24 county makes a written finding, based upon substantial evidence,
25 of either of the following:

26 (A) The concession or incentive is not required in order to
27 provide for affordable housing costs, as defined in Section
28 50052.5 of the Health and Safety Code, or for rents for the
29 targeted units to be set as specified in subdivision (c).

30 (B) The concession or incentive would have a specific adverse
31 impact, as defined in paragraph (2) of subdivision (d) of Section
32 65589.5, upon public health and safety or the physical
33 environment or on any real property that is listed in the
34 California Register of Historical Resources and for which there is
35 no feasible method to satisfactorily mitigate or avoid the specific
36 adverse impact without rendering the development unaffordable
37 to low- and moderate-income households.

38 (2) The applicant shall receive the following number of
39 incentives or concessions:

1 (A) One incentive or concession for projects that include at
2 least 10 percent of the total units for lower income households, at
3 least 5 percent for very low income households, or at least 10
4 percent for persons and families of moderate income in a
5 condominium or planned development.

6 (B) Two incentives or concessions for projects that include at
7 least 20 percent of the total units for lower income households, at
8 least 10 percent for very low income households, or at least 20
9 percent for persons and families of moderate income in a
10 condominium or planned development.

11 (C) Three incentives or concessions for projects that include at
12 least 30 percent of the total units for lower income households, at
13 least 15 percent for very low income households, or at least 30
14 percent for persons and families of moderate income in a
15 condominium or planned development.

16 (3) ~~The applicant may initiate judicial proceedings if the city,~~
17 ~~county, or city and county refuses to grant a requested density~~
18 ~~bonus, incentive, or concession.~~ If a court finds that the refusal to
19 grant a requested density bonus, incentive, or concession is in
20 violation of this section, the court shall award the plaintiff
21 reasonable attorney's fees and costs of suit, *except under*
22 *extraordinary circumstances in which the court finds that*
23 *awarding fees would not further the purposes of this section, in*
24 *addition to any attorney fees to which the plaintiff is entitled*
25 *under Section 1021.5 of the Code of Civil Procedure.* Nothing in
26 this subdivision shall be interpreted to require a local government
27 to grant an incentive or concession that has a specific, adverse
28 impact, as defined in paragraph (2) of subdivision (d) of Section
29 65589.5, upon health, safety, or the physical environment, and
30 for which there is no feasible method to satisfactorily mitigate or
31 avoid the specific adverse impact. Nothing in this subdivision
32 shall be interpreted to require a local government to grant an
33 incentive or concession that would have an adverse impact on
34 any real property that is listed in the California Register of
35 Historical Resources. The city, county, or city and county shall
36 establish procedures for carrying out this section, that shall
37 include legislative body approval of the means of compliance
38 with this section. The city, county, or city and county shall also
39 establish procedures for waiving or modifying development and
40 zoning standards that would otherwise inhibit the utilization of

1 the density bonus on specific sites. These procedures shall
2 include, but not be limited to, such items as minimum lot size,
3 side yard setbacks, and placement of public works
4 improvements.

5 (e) In no case may a city, county, or city and county apply any
6 development standard that will have the effect of precluding the
7 construction of a development meeting the criteria of subdivision

8 (b) at the densities or with the concessions or incentives
9 permitted by this section. An applicant may submit to a city,
10 county, or city and county a proposal for the waiver or reduction
11 of development standards and may request a meeting with the
12 city, county, or city and county. If a court finds that the refusal to
13 grant a waiver or reduction of development standards is in
14 violation of this section, the court shall award the plaintiff
15 reasonable attorney's fees and costs of suit, *except under*
16 *extraordinary circumstances in which the court finds that*
17 *awarding fees would not further the purposes of this section, in*
18 *addition to any attorney fees to which the plaintiff is entitled*
19 *under Section 1021.5 of the Code of Civil Procedure.* Nothing in
20 this subdivision shall be interpreted to require a local government
21 to waive or reduce development standards if the waiver or
22 reduction would have a specific, adverse impact, as defined in
23 paragraph (2) of subdivision (d) of Section 65589.5, upon health,
24 safety, or the physical environment, and for which there is no
25 feasible method to satisfactorily mitigate or avoid the specific
26 adverse impact. Nothing in this subdivision shall be interpreted
27 to require a local government to waive or reduce development
28 standards that would have an adverse impact on any real property
29 that is listed in the California Register of Historical Resources.

30 (f) The applicant shall show that the waiver or modification is
31 necessary to make the housing units economically feasible.

32 (g) (1) For the purposes of this chapter, except as provided in
33 paragraph (2), "density bonus" means a density increase of at
34 least 20 percent, unless a lesser percentage is elected by the
35 applicant, over the otherwise maximum allowable residential
36 density under the applicable zoning ordinance and land use
37 element of the general plan as of the date of application by the
38 applicant to the city, county, or city and county. The amount of
39 density bonus to which the applicant is entitled shall vary
40 according to the amount by which the percentage of affordable

1 housing units exceeds the percentage established in subdivision
2 (b). For each 1 percent increase above 10 percent in the
3 percentage of units affordable to lower income households, the
4 density bonus shall be increased by 1.5 percent up to a maximum
5 of 35 percent. For each 1 percent increase above 5 percent in the
6 percentage of units affordable to very low income households,
7 the density bonus shall be increased by 2.5 percent up to a
8 maximum of 35 percent. All density calculations resulting in
9 fractional units shall be rounded up to the next whole number.
10 The granting of a density bonus shall not be interpreted, in and of
11 itself, to require a general plan amendment, local coastal plan
12 amendment, zoning change, or other discretionary approval. The
13 density bonus shall not be included when determining the
14 number of housing units that is equal to 5 or 10 percent of the
15 total. The density bonus shall apply to housing developments
16 consisting of five or more dwelling units.

17 (2) For the purposes of this chapter, if a development does not
18 meet the requirements of paragraph (1), (2), or (3) of subdivision
19 (b), but the applicant agrees or proposes to construct a
20 condominium project as defined in subdivision (f) of, or a
21 planned development as defined in subdivision (k) of, Section
22 1351 of the Civil Code, in which at least 10 percent of the total
23 dwelling units are reserved for persons and families of moderate
24 income, as defined in Section 50093 of the Health and Safety
25 Code, a “density bonus” of at least 5 percent shall be granted,
26 unless a lesser percentage is elected by the applicant, over the
27 otherwise maximum allowable residential density under the
28 applicable zoning ordinance and land use element of the general
29 plan as of the date of application by the applicant to the city,
30 county, or city and county. For each 1 percent increase above 10
31 percent of the percentage of units affordable to moderate-income
32 households, the density bonus shall be increased by 1 percent up
33 to a maximum of 35 percent. All density calculations resulting in
34 fractional units shall be rounded up to the next whole number.
35 The granting of a density bonus shall not be interpreted, in and of
36 itself, to require a general plan amendment, local coastal plan
37 amendment, zoning change, or other discretionary approval. The
38 density bonus shall not be included when determining the
39 number of housing units that is equal to 10 percent of the total.

1 The density bonus shall apply to housing developments
2 consisting of five or more dwelling units.

3 (h) When an applicant for a tentative subdivision map, parcel
4 map, or other residential development approval donates land to a
5 city, county, or city and county as provided for in this
6 subdivision, the applicant shall be entitled to a 15 percent
7 increase above the otherwise maximum allowable residential
8 density under the applicable zoning ordinance and land use
9 element of the general plan for the entire development. For each
10 1 percent increase above the minimum 10 percent land donation
11 described in paragraph (2) of this subdivision, the density bonus
12 shall be increased by 1 percent, up to a maximum of 35 percent.
13 This increase shall be in addition to any increase in density
14 mandated by subdivision (b), up to a maximum combined
15 mandated density increase of 35 percent if an applicant seeks
16 both the increase required pursuant to this subdivision and
17 subdivision (b). All density calculations resulting in fractional
18 units shall be rounded up to the next whole number. Nothing in
19 this subdivision shall be construed to enlarge or diminish the
20 authority of a city, county, or city and county to require a
21 developer to donate land as a condition of development. An
22 applicant shall be eligible for the increased density bonus
23 described in this subdivision if all of the following conditions are
24 met:

25 (1) The applicant donates and transfers the land no later than
26 the date of approval of the final subdivision map, parcel map, or
27 residential development application.

28 (2) The developable acreage and zoning classification of the
29 land being transferred are sufficient to permit construction of
30 units affordable to very low income households in an amount not
31 less than 10 percent of the number of residential units of the
32 proposed development.

33 (3) The transferred land is at least one acre in size or of
34 sufficient size to permit development of at least 40 units, has the
35 appropriate general plan designation, is appropriately zoned for
36 development as affordable housing, and is or will be served by
37 adequate public facilities and infrastructure. The land shall have
38 appropriate zoning and development standards to make the
39 development of the affordable units feasible. No later than the
40 date of approval of the final subdivision map, parcel map, or of

1 the residential development, the transferred land shall have all of
2 the permits and approvals, other than building permits, necessary
3 for the development of the very low income housing units on the
4 transferred land, except that the local government may subject
5 the proposed development to subsequent design review to the
6 extent authorized by subdivision (i) of Section 65583.2 if the
7 design is not reviewed by the local government prior to the time
8 of transfer.

9 (4) The transferred land and the affordable units shall be
10 subject to a deed restriction ensuring continued affordability of
11 the units consistent with paragraphs (1) and (2) of subdivision
12 (c), which shall be recorded on the property at the time of
13 dedication.

14 (5) The land is transferred to the local agency or to a housing
15 developer approved by the local agency. The local agency may
16 require the applicant to identify and transfer the land to the
17 developer.

18 (6) The transferred land shall be within the boundary of the
19 proposed development or, if the local agency agrees, within
20 one-quarter mile of the boundary of the proposed development.

21 (i) (1) When an applicant proposes to construct a housing
22 development that conforms to the requirements of subdivision (b)
23 and includes a child care facility that will be located on the
24 premises of, as part of, or adjacent to, the project, the city,
25 county, or city and county shall grant either of the following:

26 (A) An additional density bonus that is an amount of square
27 feet of residential space that is equal to or greater than the
28 amount of square feet in the child care facility.

29 (B) An additional concession or incentive that contributes
30 significantly to the economic feasibility of the construction of the
31 child care facility.

32 (2) The city, county, or city and county shall require, as a
33 condition of approving the housing development, that the
34 following occur:

35 (A) The child care facility shall remain in operation for a
36 period of time that is as long as or longer than the period of time
37 during which the density bonus units are required to remain
38 affordable pursuant to subdivision (c).

39 (B) Of the children who attend the child care facility, the
40 children of very low income households, lower income

1 households, or families of moderate income shall equal a
2 percentage that is equal to or greater than the percentage of
3 dwelling units that are required for very low income households,
4 lower income households, or families of moderate income
5 pursuant to subdivision (b).

6 (3) Notwithstanding any requirement of this subdivision, a
7 city, county, or a city and county shall not be required to provide
8 a density bonus or concession for a child care facility if it finds,
9 based upon substantial evidence, that the community has
10 adequate child care facilities.

11 (4) “Child care facility,” as used in this section, means a child
12 day care facility other than a family day care home, including,
13 but not limited to, infant centers, preschools, extended day care
14 facilities, and schoolage child care centers.

15 (j) “Housing development,” as used in this section, means one
16 or more groups of projects for residential units constructed in the
17 planned development of a city, county, or city and county. For
18 the purposes of this section, “housing development” also includes
19 a subdivision or a planned unit development or condominium
20 project, as defined in Section 1351 of the Civil Code, approved
21 by a city, county, or city and county and consists of residential
22 units or unimproved residential lots and either a project to
23 substantially rehabilitate and convert an existing commercial
24 building to residential use or the substantial rehabilitation of an
25 existing multifamily dwelling, as defined in subdivision (d) of
26 Section 65863.4, where the result of the rehabilitation would be a
27 net increase in available residential units. For the purpose of
28 calculating a density bonus, the residential units do not have to
29 be based upon individual subdivision maps or parcels. The
30 density bonus shall be permitted in geographic areas of the
31 housing development other than the areas where the units for the
32 lower income households are located.

33 (k) The granting of a concession or incentive shall not be
34 interpreted, in and of itself, to require a general plan amendment,
35 local coastal plan amendment, zoning change, or other
36 discretionary approval. This provision is declaratory of existing
37 law.

38 (l) For the purposes of this chapter, concession or incentive
39 means any of the following:

(1) A reduction in site development standards or a modification of zoning code requirements or architectural design requirements that exceed the minimum building standards approved by the California Building Standards Commission as provided in Part 2.5 (commencing with Section 18901) of Division 13 of the Health and Safety Code, including, but not limited to, a reduction in setback and square footage requirements and in the ratio of vehicular parking spaces that would otherwise be required that results in identifiable, financially sufficient, and actual cost reductions.

(2) Approval of mixed use zoning in conjunction with the housing project if commercial, office, industrial, or other land uses will reduce the cost of the housing development and if the commercial, office, industrial, or other land uses are compatible with the housing project and the existing or planned development in the area where the proposed housing project will be located.

(3) Other regulatory incentives or concessions proposed by the developer or the city, county, or city and county that result in identifiable, financially sufficient, and actual cost reductions.

This subdivision does not limit or require the provision of direct financial incentives for the housing development, including the provision of publicly owned land, by the city, county, or city and county, or the waiver of fees or dedication requirements.

(m) Nothing in this section shall be construed to supersede or in any way alter or lessen the effect or application of the California Coastal Act (Division 20 (commencing with Section 30000) of the Public Resources Code).

(n) Nothing in this section shall be construed to prohibit a city, county, or city and county from granting a density bonus greater than what is described in this section for a development that meets the requirements of this section or from granting a proportionately lower density bonus than what is required by this section for developments that do not meet the requirements of this section.

(o) For purposes of this section, the following definitions shall apply:

(1) "Development standard" includes site or construction conditions that apply to a residential development pursuant to any ordinance, general plan element, specific plan, charter

1 amendment, or other local condition, law, policy, resolution, or
2 regulation.

3 (2) “Maximum allowable residential density” means the
4 density allowed under the zoning ordinance, or if a range of
5 density is permitted, means the maximum allowable density for
6 the specific zoning range applicable to the project.

7 (p) (1) Upon the request of the developer, no city, county, or
8 city and county shall require a vehicular parking ratio, inclusive
9 of handicapped and guest parking, of a development meeting the
10 criteria of subdivision (b), that exceeds the following ratios:

11 (A) Zero to one bedrooms: one onsite parking space.

12 (B) Two to three bedrooms: two onsite parking spaces.

13 (C) Four and more bedrooms: two and one-half parking
14 spaces.

15 (2) If the total number of parking spaces required for a
16 development is other than a whole number, the number shall be
17 rounded up to the next whole number. For purposes of this
18 subdivision, a development may provide “onsite parking”
19 through tandem parking or uncovered parking, but not through
20 onstreet parking.

21 (3) This subdivision shall apply to a development that meets
22 the requirements of subdivision (b) but only at the request of the
23 applicant. An applicant may request additional parking incentives
24 or concessions beyond those provided in this section, subject to
25 subdivision (d).